

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No. 130 of 2006

Mr.Pyarelal Ramroop Gupta

Petitioner

Vs.

Shri A.N.Roy,
Commissioner of Police,
Greater Bombay & ors.

Respondents

Mr.M.K.Kocharekar for petitioner.
Mrs.A.S.Pai, APP for State.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

October 10, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. This petition filed under Article 226 read with Articles 21 and 22 of the Constitution of India challenges the order of detention passed on 21/10/2005 by the Commissioner of Police, Brihan Mumbai under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (for short "the MPDA Act"), against Sanjay Ramrup Gupta and the said order has been effected on 22/10/2005 along with the Hindi translation of all the documents. The order was approved by the Government on 28/10/2005 after the detenu was taken in arrest on 22/10/2005, reference to the Advisory Board under Section 10 of the MPDA Act was made on 29/10/2005 and the Advisory Board gave its opinion on

28/11/2005 which was received by the Government on 29/11/2005 and consequently the impugned detention order has been confirmed on 13/12/2005.

2. The grounds of detention are more than one but the learned counsel for the petitioner pressed the challenge in this petition on the following two grounds viz.

(a) the detention order is based on two CRs i.e. C.R.No.213/05 and C.R.No.216/05 registered with Mahim Police Station as well as two in-camera statements but the CRs cannot make out any ground for declaring the detenu as a dangerous person if regards be had to the complaints set out therein and the in-camera statements were recorded on 14/9/2005 and 15/9/2005 referring to the incidents of July 2005 and these incidents do not fall in the category of "public order". Therefore, the impugned detention order is based on no reasons so as to hold the detenu a dangerous person as defined under Section 2(b-1) of the MPDA Act, and

(b) the incidents mentioned in the in-camera statements are stale and the propensity and

potentiality of these incidents to the order of
detention was snapped.

3. To consider the challenge to the impugned order on the abovesaid grounds we need to summarise the sequence of events leading to the passing of the detention order dated 21/10/2005. One Chetanlal Mithalal Jain, resident of Room No.8, Nasarvanjiwadi, Pitambar Lane, Mahim (West) lodged a complaint on 10/8/2005 with the Mahim Police Station and it came to be registered as C.R.No.213/05. As per the complainant he was regularly giving hafta money of Rs.500/- per month for the past one year to the petitioner so that the petitioner would not cause disturbance in his business of conducting a tea stall on the footpath near Narli Garden. As the demands of the detenu were increasing he filed complaint with the concerned police station on 5th August 2005. On 9/8/2005 in the evening at about 18.00 hours the complainant was conducting his tea stall and the detenu reached there. The complainant offered him Rs. 500/- but the detenu demanded Rs.2000/- per month and refused to accept Rs. 500/-. The complainant pleaded that he was an AIDS patient, was required to spend sufficiently big amount on

medicines and treatment and, therefore, he was not able to pay Rs.2000/- per month. The detenu got annoyed and pushed the complainant and threatened him that his hands and feet will be cut into pieces if the complainant failed to pay Rs.2000/- on the next day by 2 p.m. when the detenu would again visit him. The complainant, therefore, approached the police station on 10/8/2005 and offence punishable under Sections 384 and 387 of IPC was registered. The police laid a trap for nabbing the detenu and were successful in doing so at about 14-15 hrs. on 10/8/2005. On accepting the marked notes of Rs.500/- each he was taken in custody after his personal search in which GC notes of Rs.500/- along with other cash of Rs.7030/- was collected from his person. During the course of investigation the statements of six persons were recorded. He was released on bail as per the order dated 22/8/2005 passed by the learned Addl. Chief Metropolitan Magistrate's 9th Court, Bandra. The first in-camera statement recorded on 14/9/2005 of Witness "A" disclosed that in the second week of July 2005 at about 18.30 hrs. while the witness was conducting his business in the area of Kapad Bazar, the detenu threatened him and demanded a sum of Rs.10,000/-. The witness asked

whether he is an Income Tax officer. On this the detenu got annoyed and his associate caught hold of the witness and pulled him on the road and started assaulting him. When the witness shouted loudly for help, some people from the neighbouring area started coming forward but at that point of time the detenu took out a knife from his pocket and his associate took out a sura hidden under his clothes and threatened the mob to disperse from the place. The people ran helter skelter and the shopkeepers closed their shops. Hawkers left their belongings and ran away. The detenu's associate then rested the sura on the neck of the witness and carried out his personal search in which he found Rs.4,500/- and the detenu along with the associate left the place with the money and threatened the witness not to go to the police station lest he would not be left alive. Witness "B" in his statement recorded on 15/9/2005 described the similar incident of extortion of an amount of Rs.7000/- from the cash box in the fourth week of July 2005 at about 20.00 hrs. In the said incident also the detenu had used knife to threaten the witness and when he expressed his helplessness to give the money, the detenu kicked him on his stomach and the witness collapsed. Due to the fear the

witness took out Rs.7000/- from the cash box and handed over to the detenu. The detenu left the place warning the witness not to go to the police lest he will not be left alive.

4. The incident recorded in the C.R. had taken place on 10/8/2005, the incident recorded in the in-camera statement of Witness "A" had taken place in the second week of July 2005 and the incident recorded in the statement of Witness "B" had taken place in the fourth week of July 2005. Both the in-camera statements were verified by the Asst. Police Commissioner and the verification meets the requirements of law so as to rely upon the same in support of the detention order. The proposal for the detention of detenu was initiated on 23/9/2005 and submitted by the Senior Inspector of Police through proper channel. The Deputy Commissioner of Police, Zone V considered the said proposal and forwarded to the Addl. Commissioner of Police (Crime) who endorsed the same on 3/10/2005 and placed before the Detaining Authority. On 7/10/2005 the Detaining Authority endorsed the same and formulated draft grounds of detention. On the same day the papers were forwarded to the Senior Police Inspector,

PCB-CID. The papers were thereafter forwarded to the Sponsoring Authority i.e. Mahim Police Station on the very same day and they were translated, typed and compiled (331 pages), more so when the detenu knew only Hindi language. The Senior Police Inspector, PCB-CID resubmitted the proposal on 19/10/2005 and in between on 8th, 9th, 12th and 16th of October 2005 there were holidays. The proposal was thereafter forwarded to the Deputy Commissioner of Police who endorsed the same on 20/10/2005 and the detention order has been passed on 21/10/2005. Thus for the incidents which had taken place in July and August 2005 the proposal for detention was initiated in September 2005. Therefore, it cannot be said that the detention order was based on stale grounds or that the propensity and potentiality between the alleged incidents amounting the detenu being a dangerous person was snapped with reference to the date of the detention order.

5. Even though the C.R.No.216/05 registered for the offences punishable under Sections 384 and 387 of IPC was filed by an individual and it dealt with a personal complaint, the complaint was of extortion of money under threats to the safety and life of the

complainant. The complainant was carrying on his tea stall on the footpath and, therefore, the demand of hafta with an increased amount of Rs.2000/- was in the public view and it had caused an alarm and scared the members of public in the nearby area. The incidents referred to in C.R.No.216/05 and two in-camera statements clearly spoke of detenu being a dangerous person as defined under Section 2(b-1) of the MPDA Act. It was necessary to take preventive steps to ensure that his activities of demanding extortion at knife point and under the threats of bodily injury to the hawkers, shopkeepers in the concerned area were required to be controlled to avoid any law and order situation in future. His acts were certainly prejudicial to the maintenance of public order and the detaining authority was justified in treating him a dangerous person. There is thus a connectivity between all the three incidents from second week of July 2005 to 10th August 2005 and, therefore, there is no merit in the challenge to the impugned order on the first ground as stated hereinabove.

6. Thus on both the grounds the challenge to the impugned order of detention is unsustainable and the

same must fail.

7. The petition is, therefore, dismissed. Rule
discharged.

(NARESH H. PATIL,J.)

(B.H.MARLAPALLE